

*Before The  
The Department of Homeland Security  
Transportation Security Administration*

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*(Docket No. TSA-2003-14610) • 9*

*"Security Threat Assessment For Individuals Applying for A Hazardous  
Materials Endorsement For A Commercial Drivers License"*

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*The Distribution & LTL Carriers Association submits these comments on the interim final rules of TSA that implement the PATRIOT ACT and prohibit a state from issuing or renewing a hazmat endorsement to a commercial drivers license until TSA has determined that the individual does not pose a security threat. Specifically, we recommend that TSA amend these interim rules to: (1) allow a state to extend the expiration date of an individual's existing endorsement beyond April 29, 2004; (2) require an individual to identify on the new application form its current trucking employer and list the employer's phone number and address; and (3) require the state to promptly notify that employer of the determination by TSA whether the individual either does or does not pose a security threat. In addition, we recommend that several of the disqualifying offenses ( such as: dishonesty , fraud, a crime involving a severe transportation security incident, and improper transportation of a hazardous material) be clarified in both these rules and in the application form to be prepared by the states and signed by the individual. Absent clarification, some individuals might be discouraged from applying for or renewing a hazmat endorsement under the mistaken belief that a minor violation will disqualify them.*

*The Distribution & LTL Carriers Association is a national trade association that represents local and regional trucking companies that principally transport less-than truckload shipments of general freight. Regional LTL carriers employ over 50,000 professional truck drivers, the overwhelming majority of whom have hazardous materials endorsements for their commercial drivers licenses. These drivers are required to have this endorsement because our members transport shipments that require placarding as hazardous materials. These shipments are often everyday commercial and household goods products such as nail polish, products in aerosol spray cans, paints and chemicals, batteries, and so forth that are sold in numerous retail stores throughout the country.*

*This association supports this security and criminal background check process which will augment the background checks already being performed by our carrier members. Our primary interest is in ensuring that our existing driver workforce does not risk losing their endorsements due to administrative delays that are likely to occur, particularly at the outset of this program. TSA appropriately recognizes this concern about the need for timely renewals and*

*transfers of these endorsements by providing some flexibility in these rules between November 3, 2003 and April 29, 2004. During this six month period, a state may extend the expiration of an individual's existing endorsement while TSA is conducting the security threat assessment on that individual. 49 C.F.R. Section 1572.5.*

*However, we believe this April 29<sup>th</sup> deadline is too abbreviated and TSA should allow these extensions to occur until November 3, 2004- a full year after the commencement of this program. There are 3.5 million individuals who currently hold hazmat endorsements and there are estimated to be 40,000 to 50,000 renewals each month. Given this volume, administrative delays will occur as this new program is rolled out, especially with the new forms, 90 day notice requirements and the fingerprinting requirements. A one year extension process is reasonable and necessary for the 50 states and TSA to establish an efficient process. Since TSA is already conducting background checks on the existing hazmat drivers, there is no harm in lengthening this extension period for these drivers, many of whom have had these endorsements for ten years or more. Therefore, we request that this subsection be amended to provide : "(3) From November 3, 2003 to November 3, 2004 , while TSA is conducting a security threat assessment on an individual-..."*

*These interim final rules also set forth in subsection (5) " state notification requirements." Within 15 days of receipt of TSA's determination that an individual is or is not a security threat, the state must transfer this information to the Commercial Drivers License Information System operator. These rules do not provide for direct notification to the current motor carrier employer by either the State or a federal agency about the determination of TSA. This is a serious flaw in these rules. The CDLIS information is frequently dated. While some states update the information within two weeks, other states are extremely slow and take four to six months to update the driver information. The 15 day posting requirement is not likely to be satisfied by all the states, especially at the outset of this program, and even if it were met by all the states, this is still 14 days too late for the employers which are putting these drivers on the road daily. There is no valid privacy or administrative reason why the states or TSA cannot immediately notify the current employers of these results if that information is gathered on the application form from the individual, and it should be.*

*Consequently, we recommend that subsection (5) be amended to add a requirement that: "a state shall immediately notify the employer of the individual of the security determination made by TSA and whether the endorsement is to be issued, renewed or denied." Obviously, this prompt notification is especially important when an adverse security assessment has resulted in a denial. Employers must remove these drivers from hazmat transport, but may also want to remove the driver from non-hazmat transport until this matter is investigated, if that driver is not terminated. Ultimately, the success of this program requires that trucking employers promptly know the results of the TSA investigation. Direct notification of employers is necessary and should be a requirement under these rules.*

*For this reason, we also recommend that the new application form, in subsection (e), be amended to include the requirement that the individual provide the name, address and phone number of his or her current trucking company employer. This information will facilitate direct notification of trucking employers.*

*Finally, we recognize that the list of disqualifying offenses is intended to cover the most serious security and criminal offenses. However, Section 1572.103 does contain some offenses that on their face may be misinterpreted to embrace past conduct that does not rise to the level of a national security threat. Those offenses, listed as numbers (13) – (16), need to be clarified either through examples or more precise definitions. Our concern is not so much with improper or inconsistent determinations being made by TSA personnel, but rather that drivers reading the application may incorrectly believe that any prior hazmat incident involving a release, spill, improper placarding or false statement about these materials may constitute a disqualifying offense. Clarification is important to avoid unintended discouragement of some individuals from seeking to renew or obtain these endorsements.*

*We hope TSA makes the recommended changes soon after the July 7th comment period closes. We would note that the FMCSA interim final rules also need to be changed since they fail to even allow a state to extend the expiration date of an existing hazmat endorsement, while the TSA rules do allow an extension until April 29, 2004 and we request that this time period be lengthened until November 3, 2004.*

*Respectfully submitted,*



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***Due: July 7, 2003***